# PRESENTED

TO THE

# Common Council

OF THE

# CITY

OF

# LONDON

THAT State or City which would keep it's self in good Order and free from Ruine, must cherish the just Impeachments, and Accusations of the People, against those who be contrary to Law through Ambition, Avarice, Pride, Cruelty, Oppression, Violation, Extortion or Corruption, &c. seeks to destroy their Liberties Properties and Estates; and though after an unwelcome and unexpected Desolution of our Wife State Physitions, yet, by God's Mercy, goodness of our King, and Prudence of a Parliament to assemble at *Oxford*; we hope to see an unseperable Union betwixt his Majesty and his People, and the many grievances (which this Land Mourns under) redressed; illegal proceedings punisht; and Oppression so discountenanced that succeeding Times shall not dare to Barter Justice for Gold, nor Sacrifice our Priviledges to Riot, nor truck away the Liberty of their Country for a little Court Holy Water.

The Nation being redress't and secured against Tyranny and Oppression, &c. will never seek after other Liberty, but rejoyce under his most Sacred Majesty, and Honourable Parliament. It cannot sure be censured as unseasonable (because always just and necessary) to remind (for I presume not to instruct) those in whose power the remedy lies, of an eminent Inconvenience to the Publick, which is the Sale of Offices; concerning which, I shall chiefly refer my discourse at present to the Honourable City of *London*, the Envy of *Europe*, *Rome's* Terrour, *England's* Heart, where the Vital Spirits circulate, and the grand Pattern by whose Measures smaller Corporations are apt to make their Presidents.

That which I offer to consideration is, That 'tis dishonourable and of very ill consequence to expose Publick Offices and Places to Sale. For it dishonours the Virgin purity of Justice by sloping the Avenues that lead to her Pallace, with Mercenary

nary encumbrances, exposes the Purchasers to almost inevitable Temptations, and gives an inlet and plausible Colour for defending *Injustice*, Bribery, Extortion and Oppression. But to double and treble the value, to manage them for the best advantage of the Seller, and to put them upon the Rack of improvement too; what is it but to bespeak the unfittest Men, the greatest Knaves or Fools, that we can meet with, to manage these Affairs and Places in which Justice, Reason and Prudence, require the Honestest and most upright Persons that can be procured.

Because the Fees of the Attornies Clarks, Sarjeants, Criers, *&c.* in the Courts of *London* have increas'd through the increase of *Injustice* by reason of the too frequent Malicious and Impertinent actions, and general corruption among them: Yet no Magistrate ought from thence to raise the value of an unlawful Sale, because he finds a sort of People *thriving and doing evil*, by living and doing *ill*. And the same reason holds against the Keepers of Prisoners, who would never give such excessive Rates for their Places; were they not wicked grinders of the Poor: Men that lay the whole design of their advantage upon the Calamities of the Miserable; at which the Magistrates are supposed too too much to connive, who suffer their Coffers to be fill'd with these Golden Temptations, because he sees them cloathed so Rich, and and grow so fat upon the Ruines of the Unfortunate; which is quite contrary to the Office of the true Magistrate, who ought to have a careful Eye upon the growth of *Oppression*, to curb and remove the Exorbitancies of *Injustice*, and to *scare* away the *proud Flesh* of Avarice and Rapine, and not to Sell *Impunity* to the Evil doer. Therefore it is not to be question'd, but infallibly asserted, That whoever receives Money for any Place, wherof the Sale is not to be warrented, does but receive a *Publick Bribe*, which only custome, and perhaps too common connivance justifies. For *never any Man*, saith *Tacitus*, *ever came to any Office by Money, but he was forced to exercise his Authority wickedly and injustly.* He that buys must sell, or he looses by the Bargain. Which makes the Pubilck Offices of *London*, like Bryers to which Sheep repair for shelter, loose a Lock.

If an Appeal be made to Holy Scripture, there is most certainly no Learning under the Sun so *Chymical*, that can extract the least drop of Authority from thence, for the Sale of Publick Justice or it's Dependancies; but excessive Penalties it may find enough upon all manner of Extortion and upon all those that connive at, & suffer it; so severely menaced, and so truly threatned by him, that never fails to perform, that nothing but a fatal *Irony* can excuse the contempt and neglect thereof, as if the *Ears* of the profit could not *hear* the *cries* of the Poor for the *thundring voice* of God's judgments; so severely denounc'd on their behalf. However they who require more particular satisfaction, may read that excellent Oration of the Prophet *Samuel*, which he made upon the resignation of his Government.

Being thus banished from the *Common-wealth* of *Israel*, this Tenent finds no better entertainment among the *Heathen*, with whom we find these two Maxims, like two Golden Pillars supporting the most flourishing and most Victorious Cities in the World, which *Aristotle* hath not been a little industrious to maintain; First, *That the Sale of Offices is the greatest wrong that can be offer'd to a Commonwealth.* Secondly, *That many ought not to buy those Places, which may, nay ought to be the reward of Virtue, and are the fittest means to supply the necessities of good Men.* The Sale of Offices in the flourishing Times of the *Athenians* was abominated, and by the *Lacedemonians* expleded as a Crime: And the *Roman* Empire in its increase and flourishing condition, Fined and Punish'd those that sought Offices *Injustly*; and they then first bred dissention among themselves, and their own destruction when they brook'd so patiently the *Sardoni* scoff of *Jugurth*, *All things at* Rome, *are to be had for Money.*

Certainly, the *Persian Cambyses* had been too severe, when he Flea'd one of his Judges for Extortion, had he sold him his Place, much more had he Farm'd it to him, at a rack Rent: Nor can we believe the same Judges Son would have given an exacted Sum to sit upon his Father's Skin, which he was forc'd to receive for his Cushin being placed in his Father's room, to terrifie him from the same Offence, which the King then told him would deserve the same punishment.

I might here repeat more of *History*, but my design is not Prolixity; unless any one should be so *hardy* as to deny the Truth of what is here set down, or otherwise attempt to shadow and be smear this Truth with Varnish of self-designing Rhetorick,

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or Logical distinctions. Nor can he be other than some contentious or interested Person, who will oppose the experienc'd Precedents of so many Wise, Illustrious, and Potent Law-givers.

To rise then from History to *Reason*, we meet with a *Thesis*, fairly bordering upon the Law of Nature, as undeniable as Truth it self; That there is nothing Arms a *Purchaser* with a more *confident defence* of his unjust dealings, than *Money* given for an Imployment. It makes him that he *blushes* not to be accused of Rigour and *Extortion*, to be Arraigned for *Violence*, nor values he the frowns of Magistracy, while with a daring Forehead he is able to upbraid his Superiour, telling him, he had not his place for *nothing*, but *paid* soundly for it, and therefore hopes he shall not be debar'd from making the *best advantage* of what he has purchas'd at so dear a rate. A thing so obvious, that reprove him never so sharply, never so severely, it seems *Collusive* and meerly Commination, so little does it signifie. For turn him out of Possession, and the succeeding Chapman is discouraged. Nor does the Judg himself scape the smutty censure of Self-interest and Partiality, that he only removes the Old one in hopes of a better Bargain from a Successor, that must be *worse* because he gives more for it. Here Justice may be said to be throughly *Blind*, while the Seller and Abbetter throw away the vail of Impartiality, and press down their *Eyelids* with their own Fingers. Thus, first Rate Offences, Misdemeanours of the upper Form must be conniv'd at and palliated, for fear of *spoiling the Market*. As for *Peccadillo's*, and petty Oppressions, they are little or not at all regarded: Yet these are the *little Vermin* that insensibly devour the poor and needy, that have most need of succour, What is the difference between the Canker that *undiscernibly* consumes, and the destructive speed of *Aqua fortis*? They both destroy: But the Canker *far more* as being less attended by the hand of care and preservation. A misdemeanour of *Three Hundred Pound* makes a great noise; yet proves perhaps but *singly* fatal, when the same Sum divided into Half-crown-Rapines shall destroy as many individual necessitous Families, impoverish'd before and altogether helpless, without creating any other sounds but those of *neglected Lamentations*. So that the Sale of such Offices is positively against the *Tenth Commandment*; as also against the Laws of the Land (as hereafter will appear.) For what greater Injury can a Man do his Neighbour than to deprive him of the greatest right that is due to him! To debar him of that Justice which ought to be afforded him in his extremity? And not only in this manner to injure his Neighbour, but his *poor Neighbour* too, the particular *Client of God himself*? For remedy of which, the Supreme Legislator made no Law, but frequent admonitions, as if man could not be guilty of so great an *Impiety* as to rob the Spital, which is an accumulated Murther. *It* is injurious to him that Sells: for how can he reach forth his hand to receive the free boons of Mercy from the God of pitty and compassion, while polluted with *the price* of Rapine, violence and injury?

The Sale of the Keeper's place of *Ludgate*, *Newgate*, with the *Conners*, &c. brings me to urge this Text a little closer, and if *I* am not unhappy to beleive report, they were at *Who gives most*? A hainous demand in the *Barter* of those *Shops of Cruelty*! A strange piece of absurd severity! To sell the *freedome* of a *Captive*, An Usurpation certainly beyond Law (to sell that little liberty which the Law has left a *Prisoner*) to the disposal of a *Turnkey*. The Law makes him a Captive to his Creditor, and the Majestrate afterwards surrenders him up for *Money*, a Slave to his worse than *Argier*-keeper? Shall the Publick Houses built at the City's charge be sold for private Lucre? So that every Room in a Prison becomes a *Shop of Barbarism* and Arbitary Power, where the Chief *Basha* of iniquity exercises an *Inhumane* Tyranny, and squeezes thevery *Faces* and *Caput Mortum* of a perish'd Estate as long as the least drop will come, by the same Art as they fetch *Oyl* out of *Bricks*; first *heating* the poor Prisoner in the Fire of his threatning indignation, and then *quenching* him again in the sweet show of a little *favour* while any moisture of Gain appears.

Here then lies the force of the *Dilemma*; Either a Prisoner for Debt may be injured in Prison, or not. Either the *Injuries* repeated, are *Injuries* or none. *If* the Negative be allow'd; then all that has been already said has been to no purpose, and Holy Writ might have been more sparing of its Exhortations. *If* the Affirmative be asserted, then he that sells a *Goalers Place*, &c. sells the Liberty, the Estate, the Portion, nay, the very *Lives* of the Prisoners under his Jurisdiction, seeing that

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through the cruelty of their Keepers so many poor People have been stript to their naked Skins, and when all was gone, have been suffocated in Holes and Dungeons, to the loss of many of their Lives, Dishonour of our Nation, and scandal of the Christian Religion.

But the *Civil Law* to which our own has nothing repugnant, informs us in the very words of that great Lawyer *Ulpian*, That a Prison is a Place of *Restraint*, and not of *Punishment*. That a Prison where there is hunger and thirst is no *Prison*, but a place of *Torture*. That no severe or bad usage is there to be admitted, where the Person in Debt remains, not as a *Slave*, but only as a *Pledge*, and security for the Creditors satisfaction. For which reason the Emperour *Honorius* affirmed, that it was the principal duty of a Judge, to be frequently inform'd by the Prisoners themselves, of the State of their Captivity, that no Office of humanity might be wanting to men, lockt up in confinement. And so merciful were those Times, that if a Prisoner dyed in Prison, the Law presum'd it the fault of the Keeper, who was not to deny either Food or Bedding to the Person in custody.

But purchas'd cruelty is now grown so bold, that if a poor Man pay not Extortionary Fees and rackt *Chamber-Rent*, he shall be thrown into *Holes* and *Common-sides*, to be devour'd by Famine, Lice and Diseases. Which being so undeniable, I appeal to the Tribunal of *Justice* it self, by what Law, or by what Authority, not claiming under the bad Title of Illegal Custome, any Sherriff who is the immediate Goaler himself, and ought to receive the custody of the Prisoner *Gratis*, can so unkindly presume to *Sell* the Deputation of any Mans Liberty and Life to the controul of sordid and imperious Avarice.

I would fain know, for it is a *Secret* in Nature not to me yet reveal'd, by what surmize of common sence a *Keeper* of a Prison, can demand a recompence or *Fee* from a Prisoner for detaining him in Prison? There is an *Admission-Fee*, he cries. Alas! how is Man fallen from the *Image* of God and his *Reason*, to believe that any Person can deserve a *reward*, for only opening the Door of misery and Destruction to annoy his Neighbour and common Friend? For being so kind as to admit him into the horrid Grave of *Im*prisonment? There is a *Dimission-Fee* too; but this altogether as absurd, to demand Mony for letting him go, that the *Law* has set free; for opening the Door to let him out of Custody whom the Receiver ought not to detain. For his *Care* in the interim, let *them* pay him that set him at work. The Prisoner is no way beholden to him for his Care: For 'tis *that* which he desires to be without. Therefore sayes the Civil Law in this case, if there be any thing due to a *Keeper*, it is due from the Creditor, whose duty it is to afford nourishment, and other supports of Life, to him, whom he keeps in Prison; and therefore the Keeper might refuse to take the Prisoner into Custody, till he had bargain'd with the Creditor for the Prisoners maintenance, as may be observed out of the Antient Volumes of the most Learned Civilians. But now such is the confidence of a Purchaser, that to *regain* his Sum expended, he sells his *Tap-House* at prodigious Rates; So that where poor Men ought to have *best* and *cheapest*, they have the *worst* in *quality*, and the *smallest* in quantity, which makes the price excessive. He Farms his *Sheets* to meer Harpies, and his great *Key* to such a peice of imperious cruelty, as is the worst of Mankind. And it is a shame to repeat the daily insolencies and indignities, which the Prisoners and their Friends are forc'd to receive at their hands. But see, *I* pray! Whether will not lewd Presidents at last lead us! It will perhaps be thought impertinent to dispute a Goalers demands for admitting us into his loathsome Mansions, when even the *Common Hangman*, no doubt encouraged by such examples, will scarce give a Malefacter a cast of his Office without a Bribe, demands very formerly his Fees, forsooth, of the Person to be Executed, and higgles with him as nicely as if he were going to do him some mighty kindness.

As to the Civil Government of a Prison, no Argument perswades me to believe, that a *Deputy Master* is any way useful, otherwise than to see that the Prisoners be secur'd, well provided for and lookt after, as appears by the very Order of *Ludgate*, where the Prisoners taking their turns of Authority among themselves, far more patiently endure a Domestick, than a Forreign subjection: So that a Master Keeper, the meer Fungus and *Toad-stool* of a Sherriffs Authority, ought to find some better way to improve the blessing of his *In*heritance, than by exposing it to the hazzard of Divine vengeance. There be those that say, the Dignity of the City Magistrate is here-

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by supported. But with what dishonour do these Men revile the City and the Magistrates of the City, at the same time? For so careful is the City to Elect Men of Estates proportionable to their Dignity, that there is no need of any Sinister assistance to maintain the *City-Grandeur*. No ill got Gains, but *Mercy*, *Justice*, *and upright Prudence*, are the supports of a City. Is it not a goodly sight to see, the tears of the poor, congealed by a Frost of neglected Charity and Injustice into a *Pearl* glittering in the Ears of such or such a Lady? To behold the Scarlet of the Receiver's Majistracy dyed with the blood of helpless innocents, or the Purchase of Extortion? To see one of the chief Punishers of Iniquity drinking Healths of forgetful plenty in Four Hundred Pound Goblets, the price of his own Infamy, and a Sergeants Roguery? Such sights as these perhaps we can only by conjecture guess at, but the All-seeing Eye of Heaven beholds all these *blind Bargains*, and it is the same thing whether the Accompt fall heavy on the *Receiver* or his Offspring.

The disposal of Goalers Places, and especially the Keepers Place of *Ludgate*, &c. In the trust whereof the *Rich* and *Honest*, not the Needy, and dissolute Designers of *Profit* are to be imploy'd, is an Affair to be debated with a tender and charitable consideration, in which Prisons the poor enjoy (or at least ought to do) many Priviledges bestow'd upon them by the Piety of many good Men deceas'd, which are rather to be rescued from past injuries, than to be buried in the ruines of private Interest; nor are the Ashes of the Dead slightly to be disturb'd by oppressive innovation.

Seeing then the Common Council of the City of *London*, who are the *Representatives* of the People of the City, have interpos'd their Just Authority to stop the Progress of so great a clamour to Heaven, as the Sale of Publick Offices, and the Voice of the *Just People* is the Voice of *God*, those Men are chiefly to take care how they stop their Ears against that *Sacred* Sound, whom private advantage leads to make opposition against the same, lest in the day of their own calamity, they cry for Mercy in vain. *London* is a City whose Government deservedly challenges the Preeminence of any City now flourishing throughout the Universe. *Rome* the *Mistress* of the World could not Conquer her self; but oftentimes lay weltring in the blood of her own Citizens; nor could she hinder her own streets from being the Stage, whereon so many dismal Tragedies of intestine Discord were Acted. Hear the Reason from the Words of One of her own Poets.

*'Cause then they Justice basely Bought and Sold,*
*And Antient Virtue was Post-pon'd to Gold.*

But *London* has been Bless't with such a continued Calm of Peace for so many Centuries of Years, that never any City yet enjoy'd, so exactly has the perpetual Motion of its Authority in most other things been *hitherto* pois'd. Were it not great pitty that so harmonious a piece of Politick Government should be now disturb'd and disorder'd by violent Usurpation. *Rome* was only rich with the Prey of Rapine, wealthy in the Trophies of successful ambition: But *London* shines a famous Pile, Opulent in the gains of honest Industry. *Rome* the Mart of War and Slaughter: *London*, *Cæsar*'s *Nobile Emporium*. But Dam up the Current of her *Meum & Tuum*, fell her Seat of Justice, and how will all her splendor be Eclipst; *Rome* had only the dim Lamps of Morality, the obscure Lights of Sententious Epicurism and Stoicism to guide and instruct her: But *London* enjoys the most Orient Beams, the most unclouded Sunshine of Divine Truth and Doctrine. I am unwilling to urge it any further. *Rome* was a City, than which there was none in the World more carefull to relieve the Poverty of her Citizens, of which in the Times of her Innocencie she had many. No question but in *London* there are many good Men that unavoidably fall to decay: Where could the City bestow her Places more Honourably than upon such? What could the City speak more Magnificent in History, than to boast that the very Train of her Magistracy, was sufficient to support the Chiefest and Choicest of her decay'd Members, content with the Lawful and modest Gains of their Employments? But on the contrary, what more dishonourable, than to sell her poor Citizens to be Dilainated and Macerated by the hand of Injustice, and for Money to make Slaughter-Houses and Shambles of her Houses of Restraint? For a City so richly deckt with the pretious Jewels of Freedome and Priviledge, to sell the last remains

of a Prisoners comfort? They then who have timely consider'd of these things, may well be encourag'd not to flinch from the maintainance of their most Noble enterprizes: For it is the duty of every one that possesses a corresponding Talent, to afford all the Arms of prevailing Arguments to active power, while employ'd in the Defence of Right and Truth, or he is a Betrayer thereof. This is no effect of Factious Turbulancy, no Disturbance of the Civil Government, but rather a means to cement and strengthen it with the force of Right understanding. Morality may Err, and the Pomp of Honour may prove forgetful; he then that only admonishes, and tells where such Errors may prove inconvenient, cannot, for that, be thought to have the less Reverence for his Superiors, or the smaller value for Authority: Rather is he to be accounted the Cities Friend, since he Breaths nothing but what tends to its preservation, and with an unbyast reality desires the increase of its renown, as much as he that with the most Cordial Motives of Interest wishes and prays for its welfare.

## *Here follows an Appendix of the Law of the Land now in force against the sale of Offices, with an Account of the Goalers and other Officers Fees, with their several Duties to the Prisoners.*

*Anno* 5°. 6°. Edw. 6. *Cap.* 16.

THe Penalty for Buying or Selling of some sort of Offices for the avoiding of Corruption which may hereafter happen to be in the Officer and Ministers in those Courts, Places or Rooms, wherein there is requisite to he had the true Administration of Justice, or Services of Trust, and to the intent that Persons Worthy and Meeet to be advanced to the Place where Justice is to be Ministred or any Service of Trust executed, should hereafter be preferred to the same, and no other.

Be it therefore Enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by the Authority of the same, That if any Person or Persons at any time here after Bargain or Sell any Office or Offices, or Deputation of any Office or Offices, or any Part or Parcel of any of them, or receive, have, or take any Money or Fee, reward, or any other profit directly or indirectly, or take any Promise, Agreement, Covenant, Bond, or any assurance, to receive or have any Money, Fee, Reward, or other profit directly or indirectly, for any Office or Offices, or for the Deputation of any Office or Offices, or any part of them, or to the intent that any Person should have exercise or enjoy any Office or Offices, or the Deputation of any Office or Offices, or any part of any of them, which Office or Offices, or any part or parcel of them, shall in any wise touch or concern the Administration or Execution of Justice, or the Receipt, Comptrolment, or Payment of any of the Kings Highness Treasure, Money, Rent, Revenue, Account, Aulneage, Auditorship, or Surveying of any of the Kings Majesties Honours, Castles, Mannors, Lands, Tenements, Woods, or Hereditaments; or any the Kings Majesties Customes, or any Administration or necessary Attendance to be had, done or executed in any of the Kings Majesties House or Houses, Customs the keeping of any of the Kings Majesties Towns, Castles or Fortresses, being used Occupied or appointed for a Place of strength and defence, or which shall concern or touch any Clarkship to be Occupied in any manner of Court of Record, wherein Justice is to be Ministred: That then all and every such Person and Persons that shall so Bargain or Sell any of the said Office or Offices, Deputation or Deputations, or that shall take any Money, Fee, Reward, or profit for any of the said Office or Offices, Deputation or Deputations, of any of the said Offices, or any part of any of them, or that shall take any Promise, Covenant, Bond, or Assurance for any Money, Reward or Profit to be given for any of the said Offices, Deputation or Deputations of any of the said Office or Offices, or any part of any of them, shall not only loose and Forfit all His and Their Right, Interest and Estate, which such Person or Persons, shall then

then have, of, in or to any of the ſaid Office or Offices, Deputation or Deputations or any part of any of them, or of, in, or to the Gift or Nomiuation of any of the ſaid Office or Offices, Deputation or Deputations, for the which Office or Offices, or for the Deputation or Deputations of which Office or Offices, or any part of any of them, any ſuch Perſon or Perſons, ſhall ſo make any Bargain or Sale, or take, receive any Sum of Money Fee, Reward or Profit, or any promiſe, Covenant or Aſſurance to have or receive any Fee, Reward, Mony or Profit: But alſo that all and every ſuch Perſon or Perſons, that ſhall give or pay any Sum of Money, Reward or Fee, or ſhall make any Promiſe, Agreement, Bond or Aſſurance for any of the ſaid Offices, or for the Deputation or Deputations of any of the ſaid Office or Offices, or any part of any of them, ſhall immediately by and upon the ſame Fee, Mony or Reward given or paid, or upon any ſuch Promiſe, Covenant, Bond or Agreement, had or made for any Fee, Sum of Money, or Reward to be paid, as is aforeſaid, be adjudged a diſabled Perſon in the Law to all intents and purpoſes, to have, occupy or enjoy the ſaid Office or Offices, Deputation or Deputations, or any part of any of them, for the which ſuch Perſon or Perſons, ſhall ſo give or pay any Sum of Money, Fee or Reward, or make any Promiſe, Covenant, Bond or other Aſſurance, to give or pay any Sum of Money, Fee or Reward. *Cook. lib.* 12. 78.

And be it alſo Enacted by the Authority aforeſaid, That all and every ſuch Bargains, Sales, Promiſes, Bonds, Agreements, Covenants and Aſſurances as before Specified, ſhall be void, to and againſt Him and Them, by whom any ſuch Bargain, Sale, Bond, Promiſe, Covenant and Aſſurance ſhall be had or made.

Provided alway, That this Act, or any thing therein contained, ſhall not in any wiſe extend to any Office or Offices, whereof any Perſon or Perſons is or ſhall be ſeized of any Eſtate of Inheritance, nor to any Office of Parkſhip, or of the keeping of any Park, Houſe, Mannor, Garden, Chaſe or Forreſt, or to any of them any thing in this Act hereto forementioned to the contrary thereof in any wiſe notwithſtanding.

Provided alſo, That if any Perſon or Perſons do hereafter offend in any thing contrary to the Tenor and effect of this Act, yet that notwithſtanding all judgments given, and all other Act and Acts executed or done, by any ſuch Perſon or Perſons, ſo offending by Authority or Colour of the Office or Deputation, which ought to be Forfited, or not occupied, or not enjoyed by the Perſon ſo offending as aforeſaid after the ſaid Offence ſo by ſuch Perſon commited or done, and before ſuch Perſon ſo offending for the ſame Offence be removed from the Exerciſe, Adminiſtration, and Occupation of the ſaid Office or Deputation, ſhall be and remain good and ſufficient in Law, to all intents conſtructions and purpoſes, in ſuch like manner and form as the ſame ſhould or ought to have remained and been, if this Act had never been had or made.

Provided alſo, That this Act, or any thing therein contained, ſhall not in any wiſe extend to any *Bargain*, Sale, Gift, Grant, Nomination, *Bond*, *Covenant*, *Promiſe*, Agreement, or Aſſurance whatſoever it be of, or for any the Office or Offices, Deputation or Deputations aforeſaid, or any part of any of them had, made, done, concluded or agreed before the Firſt day of *March* next coming, but that the ſame *Bargain*, Sale, Gift, Grant, Nomination, *Bond*, Covenant, *Promiſe*, Agreement, or Aſſurance, had, made, concluded or agreed before the ſaid Firſt day of *March*, ſhall always remain, continue, and be in ſuch force, ſtrength and effect, as if this Act had never been had or made: Any thing before in this Act mentioned to the contrary thereof in any wiſe notwithſtanding.

Provided always, and be it Enacted by the Authority aforeſaid, That this Act, or any thing therein contained, ſhall not in any wiſe extend or be prejudicial or hurtful to any of the Chief Juſtices of the Kings Courts, commonly call'd the Kings *Bench* or Common *Place*, or to any of the Juſtices of Aſſize that now be, or hereafter ſhall be, but that they and every of them may do in every behalf touching or concerning any Office or Offices to be given or granted by them or any of them, as they or any of them might have done before the making of this Act: any thing above mention'd to the contrary in any wiſe notwithſtanding.

*Cook*

## *Cook.* Rep. Lib. 12. 78. *Hill.* 8. *Jac.*

IN this very Term in the Caſe of Dr. *Trevor*, who was Chancellour of a Biſhop in *Wales*, it was reſolved that the Office of a Chancellour and Regiſter, &c. in the Eccleſiaſtical Courts, are within the Statute 5 *Edw.6.Cap.16.* The Words of which Statute are, *Any Office*, &c. *which ſhall in any wiſe touch or concern the Adminiſtration or Execution of Juſtice*; and the Words are ſtrongly Pen'd againſt Corruption of Officers, for they are, *Which ſhall in any wiſe touch or concern the Adminiſtration*, &c. And the Preamble; *And for avoiding of Corruption, which may hereafter happen to be in the Officers and Miniſters of thoſe Courts, Places, and Rooms, wherein there is requiſite to be had the true Adminiſtration of Juſtice, in Services of Truſt: And to the Intent that Perſons worthy and meet to be advanced to the Places where Juſtice is to be Miniſtred, in any Service of Truſt to be Executed, ſhould be perferred to the ſame, and none other.* Which Act being made for avoiding of Corruption in Officers, &c. And for the Advancement of Perſons more Worthy and ſufficient for to Execute the ſaid Offices, by which Juſtice and Right ſhall be alſo advanced, ſhall be Expounded moſt beneficially to ſuppreſs Corruption. And in as much as the Law allows Eccleſiaſtical Courts to proceed in Caſe of Blaſphemy, Hereſie, Schiſm, Incontinence, &c. And the Loyalties of Matrimonies, of Divorce, of the Right of Tithes, Probat of Wills, granting of Aminiſtrations, &c. And that from theſe proceedings depend not only the Salvation of Souls, but alſo the Ligitimation of Iſſues, &c.

And that no Debt or Duty can be recovered by Executors, or Adminiſtrators, without Probat of Teſtaments, or Letters of Adminiſtrations, and other things of great conſequence; It is moſt reaſon that ſuch Officers, whcih concern the Adminiſtration and Execution of Juſtice in theſe Points, which concern the Salvation of Souls, and the other matters aforeſaid, ſhall be within this Statute, then Officers which concern the Adminiſtration or Execution of Juſtice in Temporal matters; for this, that Corruption of Offices in the ſaid Spiritual and Eccleſiaſtical Cauſes is more dangerous, then the Officers in Temporal Cauſes; for the Temporal Judge commits the

the Party Convict to the Goaler, but the Spiritual Juege commits the Person Excomunicate to the Devil. Also those Officers do not only touch and concern the Administration of Justice, *&c.* But also are Services of great Trust, for this, that the pribcipal End of their proceedings is, *Pro Satnte Ammarum, &c.* And there is no Exceptors or Proviso in the Statue for hem.

*It was resolved that such Offices were within the* Pur-view, *o the said Satute.*

### *Here follows the Duty of Goaler.*

And now that Goalers, of what degree or state soever, may in some measure know the Duties of their respective places, and not through ignorance or Impudence abuse such who are committed to their *Charge.* Here is an account what their Duty is to Prisoners, according to the Laws of this Land, which all Goalers are obliged under great Penalties to observe, and the People of this Land to preserve, as their Liberties, least by such neglect, slavery be insensibly drawn upon them.

By the Common Law we find, as *Bracton* Lib. 3. fol. 105. *Goalers are ordained to hold Prisoners, not to punish them.* For Imprisonment by the Law is (neither ought to be) no more then a bare restraint of Liberty, without those illegal and uujust Destructions of close and open Prison (as is usual) See *Stamf.* Ple. Cro. fol. 70.

Therefore *Cook* in his 3 Inst. 91. saith, *That if the Goaler keep the Prisoners more streightly then he ought of right, whereof the Prisoner dieth, this is Fellony in the Goaler by the Common Law. And this is the Cause, That if a Presoner dye in Prison, the the Coroner ought to sit upon him.* See also the said *Cook* Fol. 34. *Cap. Petty Treason*; how Prisoners are to be used wherein is also an account of an Indictment of a Goaler for evil usuage of his Prisoner. *Fol.* 35. *in Trin. Term*, 7 E. 3. *cor Rege rot.* 44.----That whereas one R. B. of T. was taken and detained in the Prison of *Lincoln* Castle, for a certain Debt of Statute Merchant, in the custody of T. B. Constable of *L.* aforesaid; That the said T. B. put the said R. into the Common-Goal amongst Thieves, in a filthy Prison, contrary to the form of the Statute, *&c.* and there detained him, till he had paid him a Fine of 40. s. Whereupon *Cook* makes this Observation, *So as hereby it appeareth, where the Law requireth that a Prisoner should be kept in safe and sure Custody; yet that must be without any pain or torment to the Prisoner.*

Britton fol. 18.

Hist. lib. 1 Chap. 26.

1 E. 3. cap. 7.

So *Co.* 3 Inst. 52. saith, *If a Prisoner by the Dures, that it is hard usage of the Goaler, cometh to untimely Death, this is Murther in the Goaler.* And in the Law implieth Malice, in respect of the Cruelty.

*Horn*, in the Mirror of Justice Page 288. saith, *That it is an Abusion of the Law, that Prisoners are put into Irons, or other pain, before they are attainted.*

See also *Cook* 3 Inst. 34, 35.

And *Horn* also Pag. 34. 36. Reckons the starving of Prisoners by Famine, to be among the Crimes of *Homicide* in a Gohler.

*Vox* [illegible] 1. fol. 55. 56.

the Party Convict to the Goaler, by the Spiritual Judge commits the Person Excommunicate to the Devil, Also those Officers do not only touch and concern the Administration of Justice, &c. But also are Services of great Trust, for this, that the principal End of their proceedings is, Pro Statute Ammanum, &c. And there is no Exceptors or Proviso in the Statute for them.

*It was resolved that such Officers were within the Fur-view of the said Statute.*

*Here follows the Duty of Goaler.*

And now that Goalers, of what degree or state soever, may in some measure know the Duties of their respective places, and not through ignorance or Impudence abuse such who are committed to their Charge. Here is an account what their Duty is to Prisoners, according to the Laws of this Land, which all Goalers are obliged under great Penalties to observe, and the People of this Land to preserve, as their Liberties, least by such neglect, slavery be insensibly drawn upon them.

By the Common Law we find, as *Bracton* Lib. 3. fol. 105. *Goalers are ordained to hold Prisoners, not to punish them.* For Imprisonment by the Law is (neither ought to be) no more than a bare restraint of Liberty, without those illegal and unjust Destructions of close and open Prisons (as is usual) See *Stamf.* Pic. Cro. fol. 90.

Therefore *Cook* in his 3 Inst. 91. saith, *That if the Goaler keep the Prisoners more straight than he ought of right, where of the Prisoner sueth, that [illegible] by the Common Law, [illegible] Prison, [illegible] the Prisoner ought to put upon him.* See also the said *Cook* fol. 34. [illegible] *Petit Treasure*; how Prisoners are to be used wherein is also an account of an Indictment of a Goaler for evil usage of his Prisoner Fol. 35. *In Trin. Term.* 9 L. 3. *ter Rege* fol. 44. That whereas one R. B. of T. was taken and detained in the Prison of Lincoln Castle, for certain Debts of Statute Merchant, in the custody of T. B. Constable of [illegible] afore said, That the said T. B. put the said R. into the Common Goal amongst Thieves, in a [illegible] Prison, contrary to the form of the Statute, &c. and then [illegible] till he had paid [illegible] Whereupon [illegible] *[illegible] Prisoners.*

[illegible]

[illegible] the Law implieth Malice [illegible] the Crown.

[illegible] in the Matter of [illegible]

[illegible]

Which also Cook in his 3 Inst. Chap. 29. Title of Felony in Cases by Law Exor of Imprisonment, &c. by Statute and by the Common Law.

And next, let us see what the Law saith for the Fees due to Coolers, &c.

The Mirror of Justice, Page 288. tells us, That it was Ordained by the Law, that Prisoners or others for them, to pay anything for their entries into the Goal, or for their Going-out: This is the Common Law, there is no Fee due to them by the Common Law. See what the Statute may, The Statute of Westm. 1. chap. 26. Inith. "That no Sheriff, or "other Minister of the King, shall take Reward for doing their Office, "but what they take of the King, if they do they shall make double to the "Party agrieved, and be punished at the will of the King. Under this word, Minister of the King, are included, as Executors, Overseers, and the like. See Cook 2 Inst. fol. 209. Extortions. And agreeable is Stat. pl. Coron. 89. Pray by the Statute of 4. E. 3. Chap. 12. Coolers are to receive Thieves and Fellons, taking nothing by way of Fees for the escript of them. So odious is this Extortion or Cooler a thing very Thieves, and Fellons are exempt from payment of Fees.

And we find in our Law-Books, That no Fees are due to any Officer, Cooler, or Minister of Justice, but only those which are given by Act of Parliament; for if a Cooler will practise for any Fees, the Practipetion is void, because against this Act of Parliament, made 3 E. 1. Being an Act made within time of Memory, and take away all manner of pretended Fees before; and we are to none can be called by colour of prescription since: And therefore we find by the Books of 8 E. 4. fol. 18. That a Marshal or Cooler cannot demand any Fee for any Prisoner but the Court, but only for the Fees of the Court (the Court being not barred by this Statute of W. 1. as aforementioned) and by the Act for Fees for Entering. And agreeable to this is the Book of 21. H. 7. fol. 16. where amongst other things its held for Law, That a Cooler or Marshal or a Prison, takes his Prisoners Fees, (Cook, or Money from him, a Trespass, and the Cooler shall be answered for it: So that we may undoubtedly conclude, That there is no Fee at all due to any Cooler or Cooler of a Prison from the Prisoner (but what is due unto him by Special Act of Parliament.

And if a Cooler or Guardian of a Prison shall take any thing as a Fee of his Prisoner, he may and ought to be indicted of Extortion, and upon conviction to be removed for his Office, and if his Patent, by Constraint, Menace, or Duress, he enforced to give him; he may recover that Money against the Cooler again, upon Action upon the Case at Common Law.

Item, The King Considering the great Pol-

Stat. 23 H. 6. Chap. 10. Extortion, and Oppression, which he and his Ministers in this Realm by his Officers, Escheators, and other Clerks, Bailiffs, and Keepers of Prisons, &c. had committed by Authority aforesaid, &c. in delivering all such Extortion, Robbery, and Oppression, that no Sheriff shall be so in any manner his Ministers, nor any of his Bailiwicks. Nor shall any of his Land Officers and Ministers, by occasion, or under colour of their Office, shall take any other thing by them, nor by any other Person to their use, profit, or avail, of any Person by them or any of them, to be

Stat. 4 H. 5. Reg. predict. fol. 315.

Cook predict. 365.

21. H. 7. fol. 16.

Which alſo *Cook* in his 3 Inſt. Chap. 29. Title of *Fellony* in *Goalers* by *Dures* of Impriſonment, *&c.* by Statute and by the Common Law.

And next, let uſee what the Law ſaith for the Fees due to Goalers, *fol.* 91. The Mirror of *Juſtice*, Page 288. tells us, That it is an Abuſion of the Law, that Priſoners or others for them, to *pay* any thing for their *Entries* into the Goal, or for their *Going-out*: This is the Common Law, there is no Fee due to them by the Common Law. See what the Statutes ſay, The Statute of *Weſtm.* 1. chap. 26. ſaith. "That no Sheriff, or "other Miniſter of the King, ſhall take Reward for doing their Offices, "but what they take of the King, if they do they ſhall ſuffer double to the "Party agrieved, and be puniſhed at the will of the King. Under this word, *Miniſter* of the *King*, are included, *all Eſcheators, Coroners, Goalers, and the like.* See *Cook* 2 Inſt. fol. 209. affirms. And agreeable is *Stamf. pl. Coron.* 79. Nay by the Statutes of 4. *E.* 3. Chap. 10. Goalers are to receive *Thieves* and *Fellons*, taking nothing by way of Fees for the receipt of them. So odious is this Extortion of Goalers that very Thieves and Fellons are ezcept from payment of Fees.

And we find in our Law-Books, That no Fees are due to any Officer, Goaler, or Miniſter of Juſtice, but only thoſe which are giuen by Act of Parliament; for if a Goaler will preſcribe for any Fees, the Preſcription is void, becauſe againſt this Act of Parliament, made 3 *E.* 1. being an Act made within time of Memory, and takes away all manner of pretended Fees before; and we are ſure none can be raiſed by colour of preſcription ſince: And therefore we find by the Books of 8. *E.* 4. fol. 18. *That a Marſhal or Goaler cannot detain any Preſoner after his diſcharge from the Court, but only for the Fees of the Court* (the Court being not barred by this Statute of *Weſtm.* 1. aforementioned) *and if he do, he may be Indicted for Extortion.* And agreeable to this is the Book of 21. F. 7. fol. 16. where amongſt other things its held for Law, *That if a Goaler or Guardian of a Priſon, takes his Priſoners proper Garment, Cloak, or Money from him, it is a Treſpaſs, and the Goaler ſhall be anſwerable for it:* So that we may undeniably conclude, That there is no Fee at all due to any *Goaler* or *Guardian* of a Priſon from the Priſoner (but what is due unto him by ſpecial Act of Parliament.

And if a Goaller or Guardian of a Priſoner, ſhall take any thing as a Fee of his Priſoner, he may and ought to be *Indicted* of *Extortion*, and upon conviction to be removed for his Office; and if his Priſoner, by Conſtraint, Menace, or Dures, be enforced to give him Money; he may recover that Money againſt the Goaler again, in an Action of the Caſe at Common Law.

Stat. 23 *H.* 6. Chap. 10.

Stat. 4. *H.* 4. 5.

*Raſt.* predict. fol. 318.

*Cook*, predict. 365.

21. *H.* 7. fol. 16.

Item, The King Conſidering the great Perjury, Extortion, and Oppreſſion, which be and have been in this Realm by his Sheriffs, Under-Sheriffs, and their Clarks, Bailiffs, and Keepers of Priſons, *&c.* hath ordained by Authority aforeſaid, in eſchewing all ſuch Extortion, Perjury, and Oppreſſion, that no Sheriff ſhall let to Farm in any manner his County, nor any of his Bailiwicks. Nor that any of the ſaid Officers and Miniſters, by occaſion, of under colour of their Office, ſhall take any other thing by them, nor by any other Perſon to their uſe, profit, or avail, if any Perſon by them or any of them to be

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Arreſted or Attatched, for the ommitting of any Arreſt or Attatchment to be made by their Body, or of any Perſon by them, or any of them (by force or colour of their Office Arreſted or Attatched) for Fine, Suit of Priſon, Mainpriſe, letting to Bail, or ſhewing any Eaſe or Favour (to hny ſuch Perſon Arreſted or to be Attatched) for their Reward or Profit; but ſuch as follo&, that is to ſay, For the Sheriff 20*d*. The Officer which maketh the Arreſt or Attatchment, 4 *d*. And the Goaler of the Priſon if he be committed to Ward, 4 *d*.——And that all Sheriffs, Bailiffs, Goalers, or any other Officer or Miniſters, which do do contrasy to this Ordinance, in any Point of the ſame, ſhall loſe to the Party in this behalf indammage or grieved, his trebble Dammages, and ſhall forfi the the Sum of 40 *l*. for every ſuch Offence, the one Moiety 30 the King, the other to the Profecutor, to be Recovered at Common Law, in either of the Courts of Kings-Bench, or *Common-Pleas* at *Weſtminſter*.

*Raſt*. predict. fol. 371.

Stat. 21. *Ed*. 0.

This is a perfect Account of the Goalers Fees in all Caſes, where Perſons are laid in Priſon upon Civil Matters and Cauſes, which Fee of 4 *d*. is more then any other Statue or Law allows them to take from their Priſoners: But in ſuch Chſes where the King is Party, its eſtabliſhed, "That the Priſoners in all the Kings Priſons ſhould be maintained at the "Kings Charge, and out of the Kings Revenues, according to the Old Law of the Land, much leſs to have Money extorted from by the Goaler. But look into the Priſons in and about the City of *London*, what horrible Oppreſſions, Extortions and Cruelties, are Exerciſed upon the Free-born People of *England*, yea in moſt Priſons throughout this Kingdom.

So that by the Laws of the Land it appears, that thoſe who Sell, or take any manner of Reward for any Publick Office or Palce, or thoſe who do receive any greater Fee than therein is expreſt, have no more Property, Right or Intereſt to do, than the Pyrate has to the peaceable Merchantmans Ship, a Robber to the innocent Traveller's Purſe, or the Wolf to blood of the Lamb: And incaſe ſuch Laws as thoſe are not to be Obſerved, who can be aſſured to enjoy their Rights, Liberties, nay, their Wives, Children or Eſtates, longer than it pleaſeth the will and pleaſure of Cruel, Ravenus and Mercenary Extortioners, *&c*. who ſtick not to turn Butchers to the Peoples Priviledges, and Conſpirators againſt their Liberties, *&c*? What Game ſuch Perſons play at you may gueſs, and I would with eaſe expreſs; but Modeſty engages me at this time to forbear; ſince the Generality of this City and Nation too, have been ſtricken with an amazement to ſee the many Breaches herein, againſt the very Face of Law, Arreſted to Uſher in Oppreſſion. Judgment is turned back, Juſtice in this Particulars ſtands a far off, and our Antient, Juſt, and Fundamental Laws of Mercy, are turned into a ſhadow, and they who endeavour to reclaim ſuch Evils draw on themſelves the Frowns and Diſpleaſe of Such and Such.

But as God's Indignation reſted upon the Children of *Iſrael*, till *Achan*'s Theft was diſcover'd and puniſht: So this City ſuffers ſore Judgments, till it purgeth it ſelf of thoſe many *Achan*'s that lodge in her Boſom, and live upon the Ruine of her moſt neceſſitous Inhabitants.

*James Whiſton.*

*F I N I S.*